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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/521,907 | 03/09/00 | LYNGSTADAAS | S 49121 |

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EXAMINER

EWOLDT, G

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1644 | 2 |

DATE MAILED:

01/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

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Office Action Summary

Application No.

09/521,907

Applicant(s)

Lyngstadaas et al

Examiner

Gerald Ewoldt

Group Art Unit

1644

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-31 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claims 1-31 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☒ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152
- ☒ Fax Transmittal Form

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

1. **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

2. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-27, drawn to a method of preparing a pharmaceutical or cosmetic composition for promoting the take of a skin graft, classified in Class 514, subclass 1.

II. Claims 28-31, drawn to a method of promoting the take of a skin graft, classified in Class 424, subclass 278.1.

The inventions are distinct, each from the other because:

3. Groups I and II are different methods. These inventions require different reagents acting through different process steps with different modes of operation and different endpoints. Therefore they are patentably distinct.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. Should Applicant elect Group I, Applicant is further required under 35 U.S.C. § 121 to elect a **specific** method of preparing a pharmaceutical or cosmetic composition for promoting the take of a skin graft comprising:

A) a **specific** type of graft, such as one listed in claims 5-12,

B) a **specific** type of active enamel substance, such as one listed in claim 14, of a **specific** molecular weight, such as one listed in claims 18-20,

C) a **specific** type of excipient, such as one listed in claims 25-27.

The different graft types have different physiological requirements and different probabilities of successful engraftment. The different active enamel substances comprise different chemical compositions; some, i.e., amelogenins and non-amelogenins, are mutually exclusive. The different excipients comprise different chemical compositions with different physiological properties. Therefore, the species of Group I are independent and patentable over one another.

6. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (703) 308-9805. The examiner can normally be reached Monday through Thursday and alternate Fridays from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

G.R. Ewoldt, Ph.D.
Patent Examiner
Technology Center 1600
December 28, 2000



Patrick J. Nolan, Ph.D.
Primary Examiner
Technology Center 1600